

## **CIVIL SERVICE COMMISSION MINUTES**

**August 5, 1998**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin, President  
Roy Dixon, Vice-President  
Mary Gwen Brummitt  
Gloria Valencia-Cothran  
Sigrid Pate

Comprising a quorum of the Commission

Larry Cook, Executive Officer  
Ralph Shadwell, Deputy County Counsel  
Joy Kutzke, Reporting

**CIVIL SERVICE COMMISSION MINUTES**  
**August 5, 1998**

1:30 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
8,9,10,11			2,3

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Valencia-Cothran. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda.**

- a. Commissioner Brummitt: **Patricia Lundberg** appealing an Order of Separation from the Sheriff's Department.
- b. Commissioner Brummitt: Dung Tran, S.E.I.U. Local 2028, on behalf of **Anne Mackenzie** appealing an Order of Demotion from the Health and Human Services Agency.

**REGULAR AGENDA**

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1. Approval of the Minutes of the regular meeting of July 15, 1998.

**Approved.**

**WITHDRAWALS**

2. **Carlos Lopez** appealing an Order of Termination from the Assessor/Recorder/County Clerk. Commissioner Dixon previously assigned.

**Withdrawn.**

3. Richard Pinckard, Esq., on behalf of Deputy Sheriff **Henry Ramos** appealing an Order of Suspension from the Sheriff's Department. Commissioner Brummitt previously assigned.

**Withdrawn.**

#### **CONFIRMATION OF ASSIGNMENT/REASSIGNMENTS**

4. Commissioner Dixon as hearing officer in the appeal of **Brian Rosa** from an Order of Suspension from the Health and Human Services Agency.

**Confirmed.**

5. Commissioner Brummitt as hearing officer in the appeal of **Mary Avastu** from an Order of Termination from the Department of Environmental Health.

**Confirmed.**

6. Commissioner Dixon as hearing officer in the appeal of **Raphael Johnson** from a Notice of Separation from the Department of General Services.

**Confirmed.**

7. Commissioner Austin as hearing officer in the appeal of **Joseph Alkire** from an Order of Demotion, Suspension and Transfer within the Probation Department.

**Confirmed.**

#### **PROCEDURAL INVESTIGATIONS**

##### **Complaints**

8. **Daniel Marhsall**, Esq., requesting a Rule XI investigation regarding the manner in which the Department of Human Resources, the Board of Supervisors and the CAO handled his layoff from EOMO and the abolishment of EOMO.

RECOMMENDATION: Deny Request

Daniel Marshall addressed the Commission explaining his position as to why the Commission should grant him a Rule XI investigation regarding the manner in which he was laid off from EOMO and the manner in which EOMO was abolished by the Board of Supervisors. He asserted that there is no justification for lack of work and that the actual reasons for his layoff and EOMO's dissolution are retaliatory and perpetrated with greed as the motive. He explained that many of EOMO duties have been inherited by the Office of Internal Affairs which received Board authorization to hire investigators. The Office of Internal Affairs reports directly to the Chief Administrative

Officer. Mr. Marshall stated that County Counsel's opinion that the Board of Supervisors does not have to fill the EOMO Director position is suspect. He explained that the position was placed in the Charter by the vote of the people. Mr. Marshall stated that DHR's position in justifying the dissolution of EOMO was the abolishment of the Consent Decree as well as a County-wide diversity plan having been developed. He asserts that there is no diversity plan in place. Mr. Marshall contends that the job-related reasons for his layoff are not true, the lack of work is erroneous, there is no diversity plan and the real reasons are discriminatory retaliation. He explained that he is in a difficult position in that if he were to file a discrimination complaint, he would be investigated by the Office of Internal Affairs and would be asking them to investigate their own boss. He alleges that the layoffs are taking place because of greed and are tied to the Operation Incentive Plan (OIP) which he alleges sets forth that management bonuses are based on meeting 60% financial goals. He contends that layoffs are occurring in order to meet those goals not because of lack of work. Larry Cook, Executive Officer, CSC, responded that the main issue in Mr. Marshall's complaint is that of the Board's right to declare a lack of work or lack of funds. He stated that County Counsel has advised that the Board has the right to determine whether a lack of work exists and may parcel out work and responsibilities to other departments as they see fit.

**Motion by Brummitt to approve staff recommendation;  
seconded by Dixon. Carried.  
Valencia-Cothran - Abstained.**

9. **Richard Anthony** requesting a Rule XI investigation regarding his layoff from the Department of Public Works (DPW).

RECOMMENDATION: Deny request

Mr. Anthony addressed the Commission claiming that a lack of work or lack of funds did not exist at DPW at the time he was laid off. He recalled the DPW's attempt to terminate him in 1994; however was reinstated by the Commission and that the Department eventually succeeded by laying him off. He stated that reengineering eliminated his position while allowing a less senior individual in a higher classification to remain. He acknowledges that the Board has the right to determine that there is a lack of funds; however, he points out that there is a significant budget reserve. Larry Cook, CSC

Executive Officer, explained the provisions of suborganizational layoff as well as the Board's right to determine lack of work and lack of funds.

**Motion by Dixon to approve staff recommendation; seconded by  
Brummitt. Carried.**

## SEPARATIONS

10. Commissioner Brummitt: **Patricia Lundberg** appealing an Order of Separation from her position of Crime Prevention Specialist with the Sheriff's Department.

### FINDINGS AND RECOMMENDATIONS:

Employee was separated from her classification of Crime Prevention Specialist in the San Diego County Sheriff's Department pursuant to Civil Service Rule XIV, Section 14.2.3. During the course of Employee's employment, she had been involved in an automobile accident in which she sustained injuries. Upon receiving clearance to return to work, the Department determined not to return Employee to her previous work site due to difficulties between Employee and her supervisor and reassigned her to another substation. Employee alleged that the injuries she incurred in the auto accident made it intolerable for her to drive the distance involved with her reassignment without aggravating her injuries. Medical experts placed no restrictions on employee relative to driving. This hearing officer concluded that the agreed medical examiners' findings that there are no driving restrictions applicable to Employee are determinative for the purpose of this hearing and that there is no disability for the purposes of the Americans with Disabilities Act. The Department reasonably exercised its discretion not to return Employee to the original substation in light of the difficulties she had at that location. It is therefore recommended that the Order of Separation be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Valencia-Cothran. Carried.**

## COMPULSORY LEAVE

### Findings

11. Commissioner Brummitt: James Gattey, Esq., on behalf of **Stephen Maier** appealing an Order of Compulsory Leave from the Sheriff's Department. (Continued from CSC meeting of 7/15/98.)

### FINDINGS AND RECOMMENDATIONS:

Employee argued that the Department improperly used the compulsory leave process in a situation where it should have used the disciplinary process. The record indicated that the Department acted in good faith in requesting the examination as to Employee's fitness for duty after considering discipline. It is concluded that the Department's placement of Employee on compulsory leave under the provisions of Compensation Ordinance Section 4.3.8 was appropriate. It is therefore recommended that the appointing authority properly placed Employee on compulsory leave; that Employee's appeal be

denied; and that this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Dixon. Carried.**

## **SELECTION PROCESS FINDINGS/COMPLAINTS**

### **Complaints**

12. **Brett Riley** appeal of removal of his name by DHR from the employment list for Field Service Officer for failure to meet the employment standards.

RECOMMENDATION: Ratify Item No. 12. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Ratified.**

## **OTHER MATTERS**

### **Performance Appraisals**

13. **Wayne Freeman** an employee in the Probation Department and Merrillyn Carpenter, on behalf of the Probation Department, requesting the sealing of Mr. Freeman's performance appraisal covering the period April 23, 1995 to April 23, 1996.

RECOMMENDATION: Grant Request

**Staff recommendation approved.**

### **Extension of Temporary Appointments**

14. Housing and Community Development

2 Housing Specialist I's (Krystyna Vitzthum and Anthony McCall)

RECOMMENDATION: Ratify item No 14.

**Ratified.**

15. Public Input.

ADJOURNMENT: 3:30 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE AUGUST 19, 1998.**